

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed February 2, 2005. In order to advance prosecution of the present Application, Claims 1, 8, 14, and 21 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 14-29 stand rejected under 35 U.S.C. §102(e) as being anticipated by Cajolet. Independent Claims 14 and 21 recite in general an ability to provide one or more samples of the rendered frames for the render job to the client prior to completion of the render job. By contrast, the Cajolet patent has no capability to provide the client with samples of rendered frames prior to completion of the render job as provided in the claimed invention. Support for the above recitation can be found at page 34, lines 1-7, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 14-29 are not anticipated by the Cajolet patent.

Claims 1-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cajolet in view of Smith, et al. Independent Claims 1 and 8 recite in general an ability to provide one or more samples of the rendered frames for the render job to the client prior to completion of the render job. As stated above, the Cajolet patent has no capability to provide the client with samples of rendered frames prior to completion of the render job as provided in the claimed invention. Moreover, the Smith, et al. patent is directed to document delivery and thus is not remotely associated with the technology of frame rendering provided in the claimed invention. Therefore, Applicant respectfully submits that Claims 1-13 are patentably distinct from the proposed Cajolet - Smith, et al. combination.

Applicant respectfully requests withdrawal of the finality of the present Office Action. "Before final

rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Cajolet and Smith, et al. patents as the Examiner has only now used the Cajolet and Smith, et al. patents to support a rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections are not sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection." M.P.E.P. §706.07.

Applicant responded to the previous Office Action of May 5, 2004 and overcame the Katsuo, et al., Hersch, et al., and Austin, et al. patents used therein by the Examiner to reject these claims. Now the Examiner comes back with the Cajolet and Smith, et al. patents which were available to the Examiner for consideration throughout the examination of the present Application but which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Cajolet and Smith, et al. patents in the same manner as the Katsuo, et al., Hersch, et al., and Austin, et al. patents were used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s]witching from . . . one set of

references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance or a final rejection." No amendments to the claims in response to the previous Final Action were made to force the Examiner to now use the Cajolet and Smith, et al. patents where they could not have been used in the previous Office Action. In fact, amendments made to Independent Claims 14 and 21 merely addressed the 35 U.S.C. §112, second paragraph, rejections of the previous Office Action and were not needed to overcome the Katsuo, et al., Hersch, et al., and Austin, et al. patents.

As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Cajolet and Smith, et al. patents and associated new grounds of rejection that could have been cited in the previous office action. By not providing Applicant the capability to fully respond to the Cajolet and Smith, et al. patents without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full and fair hearing to which it is entitled and a clear issue has not been developed as required. As a result, the Examiner has improperly made the present Office Action final. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Final Action be withdrawn.

The present Response to Examiner's Final Action is necessary to address the new grounds of rejection and newly cited art raised by the Examiner. This Response could not have been presented earlier as the Examiner has only now

provided the new grounds of rejection and newly cited art in the instant Office Action.

The Examiner has failed to provide any indication that all of the documents cited in the Information Disclosure Statement of January 6, 2004 were considered during the examination of the present Application. More specifically, the Examiner did not provide the appropriate indication that the documents cited on the second Form PTO 1449 page were considered. Therefore, Applicant respectfully requests the Examiner to provide an appropriate indication that all of the documents cited therein have been considered in the examination of the present Application.

CONCLUSION

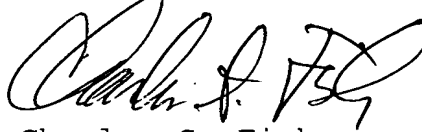
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

Reg. No. 35,870

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